COVER SHEET

ASSESSING THE SCOPE OF THE POST-IPP 'CLOSE ASSOCIATE' SPECIAL LIMITATION PERIOD FOR CHILD ABUSE CASES

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I INTRODUCTION

The 2002 Ipp Review of the Law of Negligence[1] recommended the enactment of a special limitation period for the commencement of personal injuries litigation in cases where a child is injured by a parent or a person who is in a 'close relationship' with the child's parent. A person would be in such a relationship with a child's parent if he or she had a relationship with the child's parent, such that the child's parent might be influenced not to bring an action on the child's behalf (the first limb of the definition); or, if the person's relationship with the child's parent was such that the child might be unwilling to disclose the relevant acts (the second limb of the definition).[2] In recommending this special limitation period, the Ipp Report appeared to acknowledge features of some classes of child abuse cases which make a standard personal injuries limitation period unjustifiable. Following this recommendation, New South Wales and Victoria enacted legislative changes which aim to give survivors of child abuse perpetrated by a parent or a person classed as a 'close associate' of a parent a justifiable period of time in which to institute personal injuries proceedings.

This article discusses the Ipp Report's recommendations regarding the special limitation period and the reasons given for those recommendations, which are largely motivated by psychological evidence concerning the effects of child abuse. It then outlines the legislative provisions in New South Wales and Victoria, which embody the essence of the Ipp

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[1] Commonwealth of Australia, *Review of the Law of Negligence Final Report* (2002) Canberra; hereafter generally referred to as the Ipp Report.

[2] Hereafter referred to as the second limb.

recommendations. The article then consults evidence of the psychological effects of child sexual abuse, and studies of non-disclosure and delayed disclosure by survivors of child sexual abuse, to inform an assessment of the conceptual basis of the second limb of the close associate provision. Using the psychological evidence and empirical evidence of disclosure and non-disclosure as analytical tools, this article will argue that the second limb of the close associate provision would be better predicated not on the tortfeasor's perceived relationship with the child's parent, but on the nature of the acts and circumstances of abuse and their impact on the child's willingness to disclose their abuse. The article is of particular relevance to New South Wales and Victoria, but, given the desirability and likelihood of other Australian jurisdictions enacting a special limitation period for child abuse cases, it is also relevant to the rest of Australia.

II STANDARD LIMITATION PERIOD FOR PERSONAL INJURY CASES

While enabling individuals to have access to courts to seek civil compensation for personal injuries, statutes also impose time limits on when a person can institute such proceedings. Motivating these limits are a number of policy concerns which possess theoretical and practical force when applied to most types of personal injuries actions. The best of these is that a reasonable limitation period is necessary to ensure a fair trial for the defendant by ensuring the availability of fresh evidence. Other reasons acknowledged as supporting limitation periods are that people need to be able to proceed with their lives unencumbered by the threat of an old claim, plaintiffs should not sleep on their rights, and the public has an interest in the timely resolution of disputes.[3] Accordingly, in New South Wales, Queensland, South Australia, Tasmania, Victoria, the Australian Capital Territory and the Northern

[3] *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 551 ff.

Territory, actions seeking damages for personal injuries must generally be commenced within three years from the date on which the cause of action arose.[4]

A *Extensions of time*

In cases where time has expired, most limitation statutes permit plaintiffs to apply to the court for an extension of time, based on the claim that the plaintiff has only recently discovered material facts decisive to the case, such as the presence and extent of the injury, as well as its cause.[5] However, in extension applications made by adult survivors of child sexual abuse, judicial findings about the knowledge the applicant is perceived to already have possessed, and expectations about when it was reasonable for him or her to have taken steps to ascertain the decisive facts and hence to have instituted proceedings, can deny the application for an extension of time.[6] In addition, to grant the extension of time, the court must be satisfied that the justice of the case requires the extension. Such satisfaction will only crystallise if, among

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[4] *Limitation Act 1969* (NSW) ss 18A(2) and 50C; *Limitation of Actions Act 1974* (Qld) s 11; *Limitation of Actions Act 1936* (SA) s 36; *Limitation Act 1974* (Tas) s 5(1); *Limitation of Actions Act 1958* (Vic) ss 5(1AA) and 27D(1)(a); *Limitation Act 1985* (ACT) s 16B; *Limitation Act 1981* (NT) s 12(1)(b). In New South Wales and Victoria, actions brought concerning injury sustained after the amendments in those jurisdictions have time running from the date of discoverability rather than from when the cause of action accrued: *Limitation Act 1969* (NSW) s 50C; *Limitation of Actions Act 1958* (Vic) s 27D. The *Limitation Act 1935* (WA) s 38(1)(b) sets a time limit of four years for actions for trespass to the person, assault and battery, and s 38(1)(c)(vi) sets a period of six years for negligence. As *Wilson v Horne* (1999) 8 Tas R 363 held that an action exists in both negligence and trespass for the acts constituting child sexual abuse, different limitation periods can operate. An application for special leave to appeal this decision was refused: *Wilson v Horne* (1999) 19 Leg Rep SL4a. At the time of writing, bills proposing amendments to the legislation in Western Australia (Limitation Bill 2004) and Tasmania (Limitation Amendment Bill 2004) were being considered, so references to current provisions in those jurisdictions need to be read subject to possible amendment in the near future.

[5] *Limitation Act 1969* (NSW) ss 58, 60A, 60G, 62A and 62D; *Limitation of Actions Act 1974* (Qld) s 31; *Limitation of Actions Act 1936* (SA) s 48; *Limitation Act 1974* (Tas) s 5(3); *Limitation of Actions Act 1958* (Vic) ss 23A and 27K; *Limitation Act 1985* (ACT) s 36; *Limitation Act 1981* (NT) s 44. The current *Limitation Act 1935* (WA) has no general extension provision.

[6] Arguably, on tenuous reasoning: see B Mathews, 'Judicial consideration of reasonable conduct by survivors of child sexual abuse' (2004) 27(3) *University of New South Wales Law Journal* (in print); and see *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* [2000] QSC 306 (Unreported, Supreme Court of Queensland, White J, 8 September 2000); and on appeal: *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* [2001] QCA 335 (Unreported, Queensland Court of Appeal, McPherson JA and Muir J; Atkinson J dissenting, 24 August 2001); *Applications 861 and 864* (Unreported, District Court of Queensland, Botting DCJ, 21 June 2002); and *Hopkins v State of Queensland* [2004] QDC 021 (Unreported, District Court of Queensland, McGill DCJ, 24 February 2004); contrast *Tiernan v Tiernan* (Unreported, Supreme Court of Queensland, Byrne J, 22 April 1993) and *Woodhead v Elbourne* [2001] 1 Qd R 220. See also *Johnson v Director of Community Services (Vic)* [2000] Aust Torts Reports 81-540; *SD v Director-General of Community Welfare Services (Vic)* (2001) 27 Fam LR 695; and *McGuinness v Clark* (Unreported, County Court of Victoria, Duckett J, 7 May 2003).

other things, the court is of the view that the defendant's right to a fair trial has not been prejudiced by the loss of evidence with which he or she could have mounted a defence. Due to factors that will be discussed in Part IV of this article, claims for damages arising from alleged child sexual abuse will more often be brought after long periods of time than will other types of claims, and so applications for extensions of time are more susceptible to defeat, whether based solely or partly on this consideration of delay.[7] Such applications in the context of child abuse cases will be discussed further in Part IV to analyse the second limb of the close associate provision.

B *Effect of minority*

Most jurisdictions have recognised that an injured child is impeded from bringing an action, and of being able to compel an action to be brought on his or her behalf, and so have adapted the application of the standard three year limitation period for cases of injury to children. This adaptation has worked through the device of classifying minors as being under a legal disability, and this status has been given the effect of stopping the limitation period from running until the attainment of majority. In most but not all Australian jurisdictions, this suspension of time during minority still operates.[8] In Queensland, South Australia, the Australian Capital Territory and the Northern Territory, therefore, a survivor of child sexual abuse has three years from turning 18 to institute proceedings, and in Western Australia a survivor will have until 22 or 24 depending on the whether the action is brought in trespass or negligence. However, as will now be seen, Tasmania has a different approach, and, of particular relevance to this article, the position in New South Wales and Victoria has been changed in the wake of the Ipp Report.

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[7] In Queensland, *Carter* and *Applications 861 and 864*, above n 6, are good examples of this; as well, see *Calder v Uzelac* [2003] VSCA 175 (Unreported, Victoria Court of Appeal, Buchanan and Chernov JJA and Ashley AJA, 14 November 2003); but contrast *McGuinness v Clark*, above n 6.

[8] *Limitation of Actions Act 1974* (Qld) ss 5(2), 11, 29(2)(c); see also *Limitation of Actions Act 1936* (SA) s 45; *Limitation Act 1974* (Tas) ss 2(2), 26; *Limitation Act 1935* (WA) s 40; *Limitation Act 1985* (ACT) ss 8(3), 30; *Limitation Act 1981* (NT) ss 4(1), 36.

III IPP REPORT AND LEGISLATIVE CHANGES

A *Recommendation regarding minority and disability*

The terms of reference of the Ipp Review Panel were to examine methods to reform the common law to limit liability and quantum of damages in civil proceedings.[9] Among these terms, the Review Panel was required to develop and evaluate options for a uniform limitation period of three years for all persons.[10] To this end, one of the significant recommendations of the Ipp Report was the negation of the traditional classification of a child as being under a legal disability, at least for those children who were in the custody of a parent or guardian (and could therefore have their actions brought by the parent within a standard time period). Consequently, this would abolish the suspension of time during minority. Effectively, discoverability of the child's cause of action would be sheeted home to the child's parent or guardian, and the parent or guardian would be expected to institute proceedings on the child's behalf, within three years of the cause of action arising – irrespective of whether the child was still a child or not.[11]

1 *Adoption of recommendations in New South Wales and Victoria*

New South Wales and Victoria adopted the substance of these recommendations. Legislative provisions enacted in 2002 and 2003 respectively abolished the classification of a child as being under a legal disability (in Victoria, termed legal incapacity) if he or she was in the custody of a capable parent or guardian.[12] With this came the abolition of the suspension of time during minority,[13] and the imposition on the injured child's parent or guardian of the responsibility to bring the action. In New South Wales, the action must be brought within

[9] Ipp Report, above n 1, ix.
[10] Ibid x.
[11] Ibid 95-97 [6.46-6.51], Recommendation 25.
[12] *Limitation Act 1969* (NSW) s 50F(2)(a); *Limitation of Actions Act 1958* (Vic) s 27J(1)(a). The provisions apply to cases where injury was sustained as a result of acts occurring on or after 6 December 2002, and 21 May 2003 respectively: *Limitation Act 1969* (NSW) s 50A(2); *Limitation of Actions Act 1958* (Vic) s 27N.
[13] *Limitation Act 1969* (NSW) s 50F(1); *Limitation of Actions Act 1958* (Vic) s 27J(2).

three years from when the action is discoverable, while in Victoria the action must be brought within six years from this date.[14] Discoverability in these cases is sheeted home to the child's parent or guardian,[15] and an action will be discoverable on the first date when the parent knew or ought to have known the fact of the injury, the fact that the injury was caused by the fault of the defendant, and the fact that the injury was of sufficient seriousness to justify bringing an action.[16] In both jurisdictions, a longstop of 12 years from the date of the wrongful acts applies.[17] In New South Wales, but not Victoria, there is a special extension provision for cases where an adult plaintiff who was injured as a child can demonstrate that his or her parent irrationally failed to bring an action on his or her behalf.[18]

These changes bring New South Wales and Victoria close to but beyond the position operating in Tasmania, which has possessed a unique situation in Australian jurisdictions for some time. Since 1974, Tasmania has not suspended time for minors injured while in the custody of a parent, in cases of personal injury caused through negligence, nuisance or breach of duty.[19] As the phrase 'breach of duty' has been held by the Victorian Court of Appeal to include acts of intentional trespass, this exclusion of the suspension of time operates whether the action is brought in trespass or negligence.[20] Tasmania, however, lacks the legislative detail of the New South Wales and Victorian legislation: its statute does not have definitions of discoverability, nor does it have similar extension provisions to those in the majority of the mainland jurisdictions. As well, and of even more significance given its exclusion of the suspension of time for minors, Tasmania lacks a special limitation period of the type enacted in New South Wales and Victoria.

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[14] *Limitation Act 1969* (NSW) ss 50C(1) and 50F; *Limitation of Actions Act 1958* (Vic) ss 27J and 27E.
[15] *Limitation Act 1969* (NSW) s 50F(3); *Limitation of Actions Act 1958* (Vic) s 27J(3).
[16] *Limitation Act 1969* (NSW) s 50D(1); *Limitation of Actions Act 1958* (Vic) s 27F(1).
[17] *Limitation Act 1969* (NSW) s 50C(1)(b); *Limitation of Actions Act 1958* (Vic) s 27E(2)(b). For a discussion of how these provisions will operate, see B Mathews, 'Post-Ipp special limitation periods for cases of injury to a child by a parent or close associate: new jurisdictional gulfs' (2004) 12(3) *TLJ* 239.
[18] *Limitation Act 1969* (NSW) s 62D.
[19] *Limitation Act 1974* (Tas) s 26(6).
[20] *Mason v Mason* [1997] 1 VR 325, 330.

B *Recommendation regarding special limitation period for injury by a parent or someone classed as being in a 'close relationship' with the parent*

The Ipp Panel was charged with the contraction of liability and quantum of damages, and the Ipp Report's recommendation of the general abolition of the legal disability of minors, and the imposition on children's parents and guardians of the responsibility to institute proceedings on their behalf within a shorter period of time, exemplify the strategic approaches used to fulfil the Panel's policy brief. This makes the recommendations made by the Ipp Report about cases of injury to a child inflicted by the child's parent or by a person who was in a 'close relationship' with the child's parent all the more remarkable, constituting a particularly forceful endorsement for enacting special limitation provisions for certain classes of case. Instead of reverting to the standard position of suspending time during minority for cases where a child is injured by a parent or by someone having a close relationship with the parent, thus giving the child until 21 to institute proceedings, the Ipp Report made a well-informed and significant recommendation.

The Ipp Report recognised that in cases where a child is injured by a parent or a person classed as being in a close relationship with a parent, there are unjustifiable difficulties presented by a standard limitation period of majority plus three years.[21] The Report defined a person as being in a 'close relationship' with the child's parent or guardian if the relationship was such that:[22]

(a) the parent or guardian might be influenced by the potential defendant not to bring a claim on behalf of the minor against the potential defendant; or

(b) the minor might be unwilling to disclose to the parent or guardian the nature of the actions that allegedly caused the damage.

[21] Ipp Report, above n 1, 96-97 [6.52-6.55].
[22] Ibid 96 [6.52].

The Ipp Report recommended that in these cases, 'special rules'[23] should be enacted to provide a justifiable period for plaintiffs to institute legal proceedings. First, the Report recommended that the limitation period should only begin to run from when the plaintiff turned 25 years old.[24] Second, the limitation period should be three years.[25] Third, since the date of discoverability may not occur until after expiry of this three year period (that is, after the plaintiff turns 28), the court should have discretion at any time to extend the limitation period to the expiry of a period three years after the date of discoverability.[26]

1 *Reasons underpinning the recommendation*

The reasons for the recommendation that there be special rules for these cases are not thoroughly detailed in the Report. However, there is an explicit statement that the recommended strategy would 'give plaintiffs a reasonable time to be free of the influence of the parent, guardian or potential defendant (as the case may be) before having to commence proceedings.'[27] Earlier in the Report, in the context of determining when a limitation period should commence, there is also an acknowledgment that sexual and physical abuse often produces delayed psychological effects.[28] There appears to be, therefore, three notable points in the underlying reasoning of the Panel. The first explicit point is that a child who is injured by a parent or by a person in a 'close relationship' with the parent requires a substantial period of time in which to become sufficiently free of the influence of the parent or person in a close relationship with the parent to be able to commence legal proceedings against the tortfeasor. The second point is that the Panel recognised that delayed psychological effects commonly occur in cases of child abuse, both sexual and physical. Third, assuming that the Panel's reasoning about the delayed psychological effect of child sexual and physical abuse

[23] Ipp Report, above n 1, 96 [6.53].
[24] Ibid 96 [6.54].
[25] Ibid.
[26] Ibid 97 [6.55].
[27] Ipp Report, above n 1, 96 [6.54].
[28] Ibid 88 [6.11].

informed their conclusions about the special limitation period, the recommended special limitation period can apply not only to cases of sexual abuse but also to physical abuse of children.[29]

The Ipp Panel did not invent these reasons, but implicitly endorsed a body of judicial and academic commentary about the reasons for not having a standard limitation period for cases of child abuse.[30] This body of commentary is not mere opinion since it is itself driven by recognition of psychological evidence about the sequelae of child sexual abuse. This evidence will be discussed in Part IV, but it can be briefly noted here that the evidence proves that in child abuse cases, particularly when the abuse is sexual, the nature and extent of the psychological injury often takes many years to manifest, and the causal connection between abuse and injury also typically takes a long time to be realised. Moreover, the tortfeasor's position of superiority often deters survivors from commencing litigation; and in many cases, due to feelings of shame, embarrassment, and a misplaced sense of responsibility for the acts, the victim will not even disclose the abuse, or disclosure will only occur after many years.

The adoption of a special limitation period by New South Wales and Victoria demonstrates a further endorsement of this view, and it is clear from statements in New South Wales Parliamentary Debates that the primary or even sole function of the special limitation period

[29] This article focuses on the use of the second limb of the close associate provision in cases of child sexual abuse, because the evidence referred to in this article is of direct relevance to cases of child sexual abuse, and because it is anticipated that more claims will be brought for child sexual abuse than for child physical abuse. However, it may be that the special limitation period is also applicable to claims for damages brought in cases of child physical abuse.

[30] See for example Thomas J in *W v Attorney-General* [1999] 2 NZLR 709, 729-30; Atkinson J in *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* [2001] QCA 335, above n 6, [98]; see also the Canadian Supreme Court decision in *M (K) v M (H)* [1992] 3 SCR 6, and obiter dicta in the European Court of Human Rights decision in *Stubbings v United Kingdom* (1996) Eur Ct HR Applications 22083/93; 22095/93, [56]; and B Mathews, 'Limitation periods and child sexual abuse cases: Law, psychology, time and justice' (2003) 11(3) *TLJ* 218, 230 ff; A Marfording, 'Access to Justice for Survivors of Child Sexual Abuse' (1997) 5 *TLJ* 221; and L Bunney, 'Limitation of Actions: Effect on Child Sexual Abuse Survivors in Queensland' (1998) 18 *Queensland Lawyer* 128.

is to make justifiable provision for the institution of civil proceedings in child abuse cases.[31] The provisions enacted in these two jurisdictions will now be detailed.

2 *Adoption of recommendations in New South Wales and Victoria: enactment of special limitation period*

New South Wales and Victoria adopted the substance of the Ipp recommendations, although the provisions enacted were not identical to those modelled by the Ipp Report. The provisions state that when a child is injured by the child's parent or guardian, or by a person who is a 'close associate' of the child's parent or guardian (the legislative provisions replace the Ipp Report's use of the 'close relationship' descriptor with 'close associate'), the action is discoverable by the victim when he or she turns 25 years of age, or when the cause of action is actually discoverable, whichever is later.[32] A longstop period of 12 years runs from when the victim turns 25,[33] therefore ending when the victim turns 37. Before turning to the close associate provision, and in particular, the problematic second limb of that provision, it is pertinent to comment on the significance of the confinement of discoverability to actual discoverability, and to clarify the effect of the new provisions.

The stipulation of actual discoverability is significant because it rules out any possibility of an argument by a defendant based on constructive discoverability. A defendant cannot claim that a plaintiff's time period started to run from when it could be argued that the plaintiff ought to have known of the three discoverability factors. Such arguments about what a survivor of child abuse ought to have known, and when that person ought to have known particular facts related to discoverability and hence ought to have instituted proceedings, have been

[31] New South Wales, *Parliamentary Debates*, Legislative Council, 19 November 2002 (Michael Egan, Treasurer, Minister of State Development and Vice-President of the Executive Council), at 6896 ff: 'There will be very few cases that fall within this important exception. In the main, this exception will be used when a child has been the victim of abuse.'
[32] *Limitation Act 1969* (NSW) s 50E(1)(a); *Limitation of Actions Act 1958* (Vic) s 27I(1)(a).
[33] *Limitation Act 1969* (NSW) s 50E(1)(b); *Limitation of Actions Act 1958* (Vic) s 27I(1)(b).

successfully used to defeat applications for extensions of time.[34] If the time period here ran from discoverability whether actual or constructive, rather than running only from actual discoverability, much of the benefit of the special limitation period could have been lost.

The effect of the special limitation period in New South Wales and Victoria is that in this class of case, a plaintiff who has turned 25 has three years to institute proceedings once he or she has actual knowledge of the facts of the injury, of the defendant causing that injury, and of the injury being of sufficient seriousness that it justifies legal action. Effectively then, a plaintiff here may in some cases have until turning 37 to institute proceedings. On the basis of the passage of time, a plaintiff could only be prevented from bringing an action within this 12 year period if it can be shown by the defendant that the plaintiff had actual knowledge of the three discoverability factors at a date more than three years before the plaintiff actually instituted proceedings.

This is a significant widening of time for plaintiffs in this context, effectively expanding the limitation period in cases of child abuse inflicted on a child by a parent or close associate of a parent from the old limit of 21 to the new limit of 37. It is hoped that other Australian jurisdictions will follow the example of these two States, both to enhance access to justice in these cases, and to remedy the current situation which gives people in New South Wales and Victoria a much longer period of time to institute proceedings than possessed by their counterparts elsewhere in Australia.[35] While being the first Australian jurisdictions to enact a special limitation period for child abuse cases, New South Wales and Victoria are not the first to do so in the wider context. In fact, in Canada, the provinces of British Columbia, Manitoba, Newfoundland, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan and the Yukon permit the institution at any time of civil actions based on sexual assault, having

[34] See for example *Carter* and *Hopkins*, above n 5.
[35] For detailed treatment of this point, see Mathews, 'Post-Ipp special limitation periods', above n 17, 256.

abolished time limits for this class of case.[36] Furthermore, in five Canadian jurisdictions, the importance placed on the possible impact on the plaintiff of various relationships of dependency on the tortfeasor have motivated the extension of this abolition of time beyond sexual assault cases to all types of assault.[37]

3 *The close associate provision*

Apart from cases that will arise from injury caused by a parent or guardian, arguably the major proportion of cases covered by the special limitation period will be cases involving a close associate of a parent or guardian. A 'close associate' of a parent or guardian of the victim is defined as:[38]

> a person whose relationship with the parent or guardian is such that:
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> (a) the parent or guardian might be influenced by the person not to bring a claim on behalf of the victim against the person; or
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> (b) the victim might be unwilling to disclose to the parent or guardian the conduct or events in respect of which the cause of action is founded.

The definition of 'close associate' includes two circumstances which justify extending the special time period beyond the situation where the parent or guardian is the tortfeasor. The

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[36] *Limitation Act*, RSBC 1996, c 266, s 3(4)(k)(i); *Limitation of Actions Act*, CCSM 2002, c L150, s 2.1(2)(a) and (b); *Limitations Act*, RSNL 1995, c L-16.1, s 8(2); *Limitation of Actions Act*, RSNWT 1998, c L-8, s 2.1(2); *Limitation of Actions Act*, RSNS 1989, c 258, s 2(5)(a) and (b); *Nunavut Act*, SC 1993, c 28, s 29 – which adopts the Northwest Territories provisions; *Limitations Act*, RSO 2002, c 24, s 10(1)-(3); *Limitation of Actions Act*, RSS 1978, c L-15, s 3(1)(3.1)(a); *Limitation of Actions Act*, RSY 2002, c 139, s 2(3).

[37] In Manitoba, the Northwest Territories, Nunavut, Ontario, and Saskatchewan, the abolition of time limits extends to all actions for trespass to the person, assault or battery where at the time of the injury the person was in a relationship of financial, emotional, physical or other dependency with one of the parties who caused the injury: *Limitation of Actions Act*, CCSM 2002, c L150, s 2.1(2)(b)(ii); *Limitation of Actions Act*, RSNWT 1998, c L-8, s 2.1(1)-(2) (adopted in Nunavut: *Nunavut Act*, SC 1993, c 28, s 29); *Limitations Act*, RSO 2002, c 24, s 10(1)-(3); *Limitation of Actions Act*, RSS 1978, c L-15, s 3(1)(3.1)(b)(ii).

[38] *Limitation Act 1969* (NSW) s 50E(2); *Limitation of Actions Act 1958* (Vic) s 27I(2). The New South Wales provision is reproduced here. The Victorian provision is substantially identical but uses some different terms, replacing 'an action' with 'a claim' in (a), and replacing 'the conduct or events in respect of which the cause of action is founded' with 'the act or omission alleged to have resulted in the death or personal injury' in (b).

first limb embodies the possibility that the tortfeasor's relationship with the injured child's parent might dissuade the child's parent from bringing an action on behalf of the child against the tortfeasor, even if the parent possesses knowledge of the events, the child's injury, and the seriousness of the child's injuries. Being predicated on the parent's inability or unwillingness to bring legal proceedings despite having sufficient knowledge of the discoverability factors, this is conceptually related to the s 62D special extension provision in New South Wales allowing an extension of time to an adult who, despite sustaining injury as a child while in the custody of a capable parent, did not have an action brought on his or her behalf by that parent. This limb of the provision clearly addresses the Ipp Panel's concerns of ensuring that an injured child is enabled to institute proceedings, and that a plaintiff be free of the influence of the defendant before having to commence proceedings, in this instance with the defendant's influence being exerted on the child's parent by the tortfeasor. For the purpose of this article, there appears to be no obvious problem with this limb of the provision, and it is unnecessary to make any further comment about it.

However, the second limb of the provision presents a problem requiring examination. Unlike the first limb, where the parent has knowledge but is unwilling to bring the action because of a personal connection with the tortfeasor, the second limb has a different conceptual basis. It is concerned with situations where the injured child's parent never gains knowledge of the child's injury because the child is unwilling to disclose to his or her parent the relevant acts. Yet, according to the way the provision is drafted, with a principle clause overarching and applying equally to each of the two limbs, the definition's application is limited to circumstances where the child's unwillingness to disclose is caused by the child's perception of the tortfeasor's relationship with the parent.

It is the reason for the child's unwillingness to disclose that appears contentious, and this requires analysis because of the highly significant consequence arising from the determination of a defendant being classed as a close associate or not. The consequence is that in many

cases, a plaintiff who can successfully argue that the defendant falls within the definition of 'close associate' will gain access to the justice system because of the special limitation period, whereas if the plaintiff cannot show this, time will have expired. In many cases of child abuse, the standard limitation period will have expired by the time the plaintiff can pursue a civil claim, as many cases will be brought after the plaintiff turns 25, and a significant number of these will be brought when the plaintiff is closer to 37. Therefore, in a case where the plaintiff does not disclose the abuse and later seeks to rely on the second limb of the close associate provision, a defendant may well try to argue that he or she does not fall within the close associate provision, to effectively bar the plaintiff's access to court by seeking to have the standard limitation period applied. It is anticipated that in such cases, on the current drafting of the provision, defendants will argue that the child's nondisclosure was produced not by the child's perception of the tortfeasor's relationship with the child's parent, but for some other reason, thus evading classification as a close associate. If this argument is accepted, then prima facie the second limb does not appear to apply, and the special limitation period will not have been enlivened.[39]

If the second limb is predicated on the child's nondisclosure only because of the child's perception of the tortfeasor's relationship with the child's parent, as seems to be the case from the drafting of the provision, then the wording of the second limb is too narrow. The reason for this is that a major cause of a child not disclosing sexual abuse, or of taking a long time to disclose the abuse, is not simply (or even necessarily) the abuser's relationship with the child's parent, and the child's perception of this relationship and its effect. The reasons for nondisclosure and delayed disclosure are much more nuanced, and hinge on the nature of the acts constituting the abuse and, more importantly, the nature of any feelings about those acts that the child may have by himself or herself, or which have been imposed on the child.

[39] There is obviously no judicial consideration of these provisions yet, since the provisions apply to cases of injury where the relevant alleged acts occurred on or after 6 December 2002, and 21 May 2003 respectively: *Limitation Act 1969* (NSW) s 50A(2); *Limitation of Actions Act 1958* (Vic) s 27N.

The special limitation provision is intended to give victims of child abuse inflicted by parents and close associates of parents a reasonable period of time within which to institute legal proceedings. The core of the second limb of the close associate provision is concerned with the child's willingness to disclose to his or her parent the acts constituting the alleged wrongdoing. To assess the adequacy of the content of this provision, that is, to ascertain whether the abused child's perception of the tortfeasor's relationship with the child's parent is the dominant factor in children's unwillingness to disclose their abuse, evidence about disclosure and nondisclosure by child abuse victims needs to be canvassed.

IV EVIDENCE ABOUT NON-DISCLOSURE AND DELAYED DISCLOSURE

A *Psychological evidence: common injuries caused by child sexual abuse*

Before turning to evidence about the incidence and reasons for nondisclosure and delayed disclosure of child sexual abuse, it is first necessary to gain an understanding of the psychological impact of child sexual abuse on victims, which is inextricably linked with disclosure patterns. Detailed reviews of literature regarding the psychological injuries and effects common to victims of child sexual abuse have been recently undertaken by legal commentators in this context of child abuse and civil limitation periods,[40] but a brief summary here is necessary. Immediate and short-term consequences for a child who is being or who has been sexually abused commonly include depression and low self-esteem,[41] inappropriate sexualised behaviour,[42] difficulty in peer relationships,[43] and, particularly if the abuse

[40] See for example Mathews, 'Judicial consideration of reasonable conduct by survivors of child sexual abuse', above n 6.
[41] T Wozencraft, W Wagner and A Pellegrin 'Depression and suicidal ideation in sexually abused children' (1991) 15 *Child Abuse and Neglect* 505.
[42] J McClellan, C McCurry, M Ronnei, J Adams, A Eisner and M Storck, 'Age of onset of sexual abuse: relationship to sexually inappropriate behaviours' (1996) 35 *Journal of the American Academy of Child and Adolescent Psychiatry* 1375.

involves penetration and or is of long duration, post-traumatic stress disorder (PTSD).[44] In this context, PTSD is a particularly significant consequence of abuse because the avoidance symptom of PTSD entails the victim avoiding stimuli associated with the traumatic event, including stimuli that prompt or require recollection of the event.[45] Since disclosing the abuse requires direct recollection and confrontation of it, PTSD alone is a highly significant reason behind many victims' inability to disclose their abuse. The impact of PTSD can be seen in a number of reported cases of applications to extend the limitation period in cases of child sexual abuse, where the applicants all suffered PTSD.[46]

Adolescents are likely to experience even higher levels of depression and anxiety than younger children because of their greater cognitive understanding of their abuse.[47] Adolescents may also be more susceptible than younger children to self-harm and suicidal ideation and behaviour.[48] Substance abuse and running away from home are also more frequent in adolescents than younger children.[49]

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[43] A Mannarino, J Cohen and S Berman, 'The Children's Attributions and Perceptions Scale: a new measure of sexual abuse-related factors' (1994) 23 *Journal of Clinical Child Psychology* 204.

[44] E Deblinger, S McLeer, M Atkins, D Ralphe and E Foa, 'Post-traumatic stress in sexually abused, physically abused, and nonabused children' (1989) 13 *Child Abuse and Neglect* 403; S McLeer, M Callaghan, D Henry and J Wallen, 'Psychiatric disorders in sexually abused children' (1994) 33 *Journal of the American Academy of Child and Adolescent Psychiatry* 313; D Wolfe, L Sas and C Wekerle, 'Factors associated with the development of post-traumatic stress disorder among child victims of sexual abuse' (1994) 18 *Child Abuse and Neglect* 37; S Boney-McCoy and D Finkelhor, 'Prior victimization: a risk factor for child sexual abuse and for PTSD-related symptomatology among sexually abused youth' (1995) 19 *Child Abuse and Neglect* 1401; P Ackerman, J Newton, W McPherson, J Jones and R Dykman, 'Prevalence of post-traumatic stress disorder and other psychiatric diagnoses in three groups of abused children (sexual, physical, and both)' (1998) 22 *Child Abuse and Neglect* 759; S McLeer, J Dixon, D Henry et al, 'Psychopathology in non-clinically referred sexually abused children' (1998) 37 *Journal of the American Academy of Child and Adolescent Psychiatry* 1326; A Dubner and R Motta, 'Sexually and Physically Abused Foster Care Children and Posttraumatic Stress Disorder' (1999) 67 *Journal of Consulting and Clinical Psychology* 367.

[45] The avoidance response is the second criterion of PTSD as defined by the *Diagnostic and Statistical Manual IV-TR*: American Psychiatric Association, *Diagnostic and Statistical Manual Of Mental Disorders, 4th Edition, Text Revision*, Washington DC, American Psychiatric Association (2000) 463-8.

[46] *Woodhead*, *Carter*, *Applications 861 and 864*, and *Hopkins*, above n 6.

[47] C Gidycz and M Koss, 'The impact of adolescent sexual victimization: standardized measures of anxiety, depression and behavioural deviancy' (1989) 4 *Violence and Victims* 139.

[48] C Lanktree, J Briere and L Zaidi, 'Incidence and impact of sexual abuse in a child outpatient sample: the role of direct inquiry' (1991) 15 *Child Abuse and Neglect* 447; G Martin, H Bergen, A Richardson, L Roeger and S Allison, 'Sexual abuse and suicidality: gender differences in a large community sample of adolescents' (2004) 28 *Child Abuse and Neglect* 491.

[49] M Rotherham-Borus, K Mahler, C Koopman and K Langabeer, 'Sexual abuse history and associated multiple risk behaviour in adolescent runaways' (1996) 66 *American Journal of Orthopsychiatry* 390.

Factors of individual resiliency mean that some adults who were exposed to child sexual abuse may not develop psychopathology in later life, particularly if the abuse was of low severity and duration, and if the victim had strong social support following the abuse.[50] Nevertheless, in the long-term, many adult survivors of child sexual abuse appear to be prone to psychopathology including PTSD, which again involves an inability to revisit the events[51] and there is persuasive evidence that adult survivors of child sexual abuse are susceptible to other problems including depressive symptoms,[52] and anxiety and alcohol abuse.[53]

B *Psychological evidence: non-disclosure and delayed disclosure of child sexual abuse*

1 *Non-disclosure and delayed disclosure: incidence*

An inability to disclose the abuse is related with these common psychological sequelae. Studies consistently demonstrate that many survivors of child sexual abuse never disclose it, and that for those who do become able to disclose it, many require a long period of time before they can do so. An Australian study found that 48 per cent of the women involved in the study had never disclosed their abuse, and of those who did disclose it, almost half did not

[50] See a summary of research and commentary in D Fergusson and P Mullen, *Childhood Sexual Abuse: An Evidence Based Perspective* (1999) Sage, Thousand Oaks, 67-93.
[51] Studies of adult survivors of child sexual abuse have shown high rates of PTSD: see for example N Rodriguez, S Ryan, A Rowan and D Foy, 'Posttraumatic stress disorder in a clinical sample of adult survivors of childhood sexual abuse' (1996) 20 *Child Abuse and Neglect* 943; A Rowan, D Foy, N Rodriguez and S Ryan, 'Posttraumatic stress disorder in a clinical sample of adults sexually abused as children' (1994) 18 *Child Abuse and Neglect* 51; and N Rodriguez, S Ryan, H Vande Kemp and D Foy, 'Posttraumatic Stress Disorder in adult female survivors of childhood sexual abuse: A comparison study' (1997) 65 *Journal of Consulting and Clinical Psychology* 53. See generally also P Mullen, 'Childhood Sexual Abuse and Mental Health in Adult Life' (1993) 163 *British Journal of Psychiatry* 721; A Silverman, H Reinherz and R Giaconia, 'The Long-term Sequelae of Child and Adolescent Abuse: A Longitudinal Community Study' (1996) 20 *Child Abuse and Neglect* 709; A Horowitz, C Widom, J McLaughlin and H White, 'The impact of childhood abuse and neglect on adult mental health: A prospective study' (2001) 42 *Journal of Health and Social Behaviour* 184; J Spataro, P Mullen, P Burgess, D Wells and S Moss, 'Impact of child sexual abuse on mental health: Prospective study in males and females' (2004) 184 *British Journal of Psychiatry* 416.
[52] Silverman, above n 51.
[53] Mullen (1993), above n 51.

do so until at least 10 years after the first abusive experience.[54] Similarly, an American study of 288 female child rape victims, with the study participants having an average age of 44.9 years, found that only 12 per cent had ever reported their assaults to authorities, and over 25 per cent had never disclosed their assault to anyone prior to the study.[55] In Queensland, the Project Axis survey found that of 212 adult survivors of child sexual abuse, 25 took 5-9 years to disclose it, 33 took 10-19 years, and 51 took over 20 years.[56] Significantly for this analysis, where the perpetrator is a relative, it is even more likely that the delay will be long. A Criminal Justice Commission analysis of Queensland Police Service data from 1994-1998 found that of 3,721 reported offences committed by relatives, 25.5 per cent of survivors took 1-5 years to report the acts; 9.7 per cent took 5-10 years; 18.2 per cent took 10-20 years, and 14.2 per cent took more than 20 years.[57] The effect on disclosure of the perpetrator's familial connection is clearly relevant to the content of the close associate provision.

2 *Reasons for non-disclosure and delayed disclosure*

The typical child sex offender is male,[58] and is a relative of the child or is otherwise known to the child.[59] Particularly if the abuser is a family member, victims may suffer numerous abusive acts, which can occur over a period of months or years.[60] In many cases, particularly when the abuser is known to the child - which constitutes the overwhelming majority of cases - a child will make no complaint about the abuse but will instead use strategies to cope with

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[54] J Fleming, 'Prevalence of childhood sexual abuse in a community sample of Australian women' (1997) 166(2) *Medical Journal of Australia* 65.

[55] D Smith, E Letourneau, B Saunders, D Kilpatrick, H Resnick and C Best, 'Delay in Disclosure of Childhood Rape: Results From a National Survey' (2000) 24 *Child Abuse & Neglect* 273.

[56] Queensland Crime Commission and Queensland Police Service, *Project AXIS – Child Sexual Abuse in Queensland: The Nature and Extent* (2000) Brisbane, 80 (Table 23).

[57] Ibid 82 (Table 25).

[58] Fergusson and Mullen, above n 50, 44.

[59] Fergusson and Mullen, above n 50, 45-7; Smith, above n 55. An analysis of Queensland Police Service data over a two-year period shows that of 8,504 reported child sex offences, 3,046 were committed by relatives, 1,158 were committed by acquaintances, 979 were committed by relatives, and only 686 were committed by individuals who were unknown to the complainant: Queensland Crime Commission and Queensland Police Service, above n 56, 56.

[60] M Dunne and M Legosz, 'The consequences of childhood sexual abuse' in Queensland Crime Commission and Queensland Police Service, *Project AXIS – Child Sexual Abuse in Queensland: Selected Research and Papers* (2000) Brisbane, 44, 47-55; Fergusson and Mullen, above n 50, 47; D Finkelhor, 'Current information on the scope and nature of child sexual abuse' (1994) 4 *Future of Children* 31.

it.[61] In general, it seems that children who are abused by a family member are less likely to report the abuse than if they are abused by a stranger,[62] and several studies have found that children are the least likely to disclose when the perpetrator is a natural parent.[63]

However, particularly when considering all incidences of abuse by persons known to the child, studies indicate that there are a number of reasons for nondisclosure and delayed disclosure.[64] One of the most significant factors is fear, which can take different forms. The abused child is often sworn to secrecy through threats or more subtle strategies,[65] and can fear reprisals from the abuser,[66] or can fear that abuse will be perpetrated on other family members.[67] He or she may fear family disruption or dissolution in the event of disclosure,[68] or may fear being punished for making a complaint, or may fear not being believed.[69] As well as these fears, the abused child, especially if young, may fear that the tortfeasor, for whom he or she may well have loyalty and genuine feelings, would be punished.[70]

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[61] R Summit, 'The Child Sexual Abuse Accommodation Syndrome' (1983) 7 *Child Abuse and Neglect* 177.

[62] L Berliner and J Conte, 'The process of victimization: the victims' perspective' (1990) 14 *Child Abuse and Neglect* 29; C Arata, 'To tell or not to tell: current functioning of child sexual abuse survivors who disclosed their victimization' (1998) 3 *Child Maltreatment* 63.

[63] M Sauzier, 'Disclosure of child sexual abuse: For better or for worse' (1989) 12 *Psychiatric Clinics of North America* 455; L Sas, *Three years after the verdict* (1993) London Family Court Clinic, London: Ontario.

[64] For a recent summary of the literature, see M Paine and D Hansen, 'Factors influencing children to self-disclose sexual abuse' (2002) 22 *Clinical Psychology Review* 271.

[65] Queensland Crime Commission and Queensland Police Service, above n 56, 89-90.

[66] D Russell, *The secret trauma: Incest in the lives of girls and women* (1986) Basic Books, New York, 132; T Lyon, 'The effect of threats on children's disclosure of sexual abuse' (1996) 9(3) *The APSAC Advisor* 9; S Palmer, R Brown, N Rae-Grant and M Loughlin, 'Responding to children's disclosure of familial abuse: What survivors tell us' (1999) 78 *Child Welfare* 259; T Goodman-Brown, R Edelstein, G Goodman, D Jones and D Gordon, 'Why children tell: a model of children's disclosure of sexual abuse' (2003) 27 *Child Abuse and Neglect* 525.

[67] Berliner and Conte, above n 62; Goodman-Brown, above n 66.

[68] L Lawson and M Chaffin, 'False negatives in sexual abuse disclosure interviews: Incidence and influence of caretaker's belief in abuse in cases of accidental abuse discovery by Diagnosis of STD' (1992) 7 *Journal of Interpersonal Violence* 532.

[69] B Gomes-Schwartz, J Horowitz and A Cardarelli, *Child sexual abuse: the initial effects* (1990) Sage, Newbury Park.

[70] M Mian, W Wehrspann, H Kaljner-Diamond, D LeBaron and J Winder, 'Review of 125 children 6 years of age and under who were sexually abused' (1986) 10 *Child Abuse & Neglect* 223; T Furniss, *The multi-professional handbook of child sexual abuse: integrated management, therapy, and legal intervention* (1991) Routledge, London.

Many very young child victims who lack cognitive development may not understand that the acts are abusive.[71] Even when a child does know or feel that the acts are wrong and or abusive, he or she may often possess misplaced guilt and feelings of responsibility for the acts.[72] Common feelings of shame and embarrassment are also prominent factors in victims' initial and ongoing reluctance to disclose their abuse.[73]

From this evidence, it can be appreciated that in a number of cases, one reason for nondisclosure or delayed disclosure may indeed involve the child's perception of the tortfeasor's relationship with the parent. For example, a young boy abused by his uncle might not disclose the abuse for fear of disrupting the family. This fear would be related to the boy's understanding that the abuser has a significant relationship with the boy's parents.

However, most of the reasons identified by the research about nondisclosure and delayed disclosure arise independently of the child's perception of the abuser's relationship with his or her parent. Many reasons have no connection at all with the tortfeasor's relationship with the parent, or with the child's perception of it. A large proportion of tortfeasors (sports coaches, teachers, clergy, and parents and relatives of friends) will not have any relationship with the child's parent but the child may still not disclose, or may only disclose after a long delay, for the reasons identified by the psychological research. In addition, even where the child is reluctant to disclose because of the tortfeasor's close relationship with the child's parent, that might be only one of the reasons motivating the child's silence. Other reasons such as shame and fear of reprisal could play a larger role in the child's nondisclosure.

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[71] Berliner and Conte, above n 62.
[72] P Ney, C Moore, M McPhee and P Trought, 'Child abuse: a study of the child's perspective' (1986) 10 *Child Abuse and Neglect* 511; Berliner and Conte, above n 62; K Bussey and E Grimbeek, 'Disclosure processes: issues for child sexual abuse victims' in K Rotenberg (ed) *Disclosure Processes in Children and Adolescents* (1995) Cambridge University Press, Cambridge, cited in Queensland Crime Commission and Queensland Police Service, above n 56, 88; Goodman-Brown, above n 66.
[73] D Finkelhor, *A sourcebook on child sexual abuse* (1986) Sage, Beverley Hills.

Throughout Australia there are very few reported cases where victims of child abuse have been able to institute proceedings against responsible parties, largely because child abuse (especially sexual abuse) has only gained medical and psychological recognition in the last 20 years or so, with public consciousness occurring later still, and because the psychological sequelae of abuse and the time limits imposed on actions for injury sustained as a child have been used by defendants to defeat claims.[74] Yet, cases where plaintiffs have sought an extension of the limitation period to enable the institution of civil proceedings contribute to an analysis of the second limb of the close associate provision. In particular, the reasons for these plaintiffs' delayed disclosure exemplify both psychological evidence of the consequences of child sexual abuse and the findings of empirical studies of delayed disclosure and non-disclosure, and demonstrate that a perception of the perpetrator's relationship with the child's parent is not a particularly relevant factor in delayed disclosure.

For example, in *Williams v Corporation of the Sisters of Mercy*,[75] the plaintiff suffered abuse between the ages of seven and 11, and did not disclose it until age 20 because the abuser, a priest at the orphanage where the plaintiff resided, threatened to kill him if he told anyone what was happening. Even after this disclosure, which was made to his mother, no action was taken because the plaintiff's mother begged him not to say anything to anyone because of the embarrassment she thought it would cause the family, and because she did not want to take action against the church. The plaintiff only disclosed the abuse in 1994, aged 58, some 47 years after the abuse ceased and 38 years after his initial disclosure.[76] In *Woodhead*, the plaintiff was abused between the ages of seven and 13 by a friend of her adoptive parents, but she did not disclose the abuse until she was 13, and, due to PTSD, she was not able to thoroughly discuss the abuse until she was in her mid-twenties.[77] In *Carter*, the plaintiff, who

[74] For a detailed discussion of this, see Mathews, 'Judicial consideration of reasonable conduct by survivors of child sexual abuse', above n 6.
[75] *Williams v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* (Unreported, Supreme Court of Queensland, Helman J, 17 January 1996), copy on file with author.
[76] Ibid 2-3.
[77] *Woodhead v Elbourne*, above n 6, 221-24.

resided in an orphanage and who was abused in multiple ways by a number of parties including allegedly being raped by an orphanage employee from the age of seven, originally complained of this abuse aged eight but was assaulted and punished by authorities for making the complaint. In large part due to PTSD, she did not disclose her history of abuse in detail until 1997, more than 25 years after she left the orphanage.[78] In the case of *Applicant S*, the plaintiff, who was abused by her schoolteacher when she was aged eight to 10, did not disclose the abuse until 1998, more than 30 years after the events. This delayed disclosure was caused by several factors including PTSD, shame, guilt, self-blame, and the belief that nobody would believe her if she disclosed the abuse.[79] Similarly, in *Calder*, the plaintiff, who alleged abuse by her brother when she was aged 13, also delayed her disclosure because of feelings of intense shame, guilt, self-blame, and misplaced responsibility for the abuse. There, the plaintiff only became able to disclose and explore her experience in 2000, 28 years after they occurred.[80] As a final example, the plaintiff in the case of *Wilson*, who was abused by her uncle when she was aged five to 12, delayed her disclosure because her uncle told her the events were secret, and she did not realise the abusive acts were wrongful. She also suffered PTSD, and these facts and consequences combined to delay her disclosure of her abuse until 1994, 14 years after the abuse ceased.[81]

Therefore, the psychological and empirical evidence about disclosure of child sexual abuse, which are exemplified by the factual histories of applicants for extensions of time in child abuse cases in Australia, shows that the second limb of the close associate provision should not be limited to cases where a child does not disclose the acts because of the child's perception of the tortfeasor's relationship with the child's parent. Instead, the conceptual core of the second limb - the child's unwillingness to disclose the acts causing the injury - merits the activation of the special limitation period, unrestricted by the apparent qualifier of the

[78] *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* [2001] QCA 335, above n 6, [41]-[46], [49], [75], [83].
[79] *Applications 861 and 864*, above n 6, 3-4, 11-12.
[80] *Calder v Uzelac*, above n 7, [2]-[3].
[81] *Wilson v Horne*, above n 4, 365.

'person whose relationship with the parent' clause. This does not make redundant the first limb of the provision, nor does it affect the merit of the special limitation period in cases of injury to a child by apparent or guardian. However, it does suggest that the second limb of the close associate provision should be redrafted to capture deserving cases where the injured child delays disclosure of his or her abuse, not because of any perception about the tortfeasor's relationship with the child's parent, but because of the unwillingness to disclose the abusive events, whether this is produced by fear, shame, guilt, self-blame, secrecy, failure to appreciate that the acts were wrongful, or PTSD. This approach would be more effective in securing what should be the aim of the provision, which, as referred to by the Ipp Report, is to allow the plaintiff sufficient time both to be free of the influence of the defendant, and to have overcome the psychological sequelae of the events, to the extent necessary to be able to pursue civil remedies.

V CONCLUSION

Despite being an underreported phenomenon, in Queensland in a twelve month period from 2002-03 there were 610 substantiated cases of child sexual abuse.[82] In that period throughout Australia, there were 4137 substantiated cases of child sexual abuse.[83] Unfortunately there is no reason to believe that the incidence of serious child abuse will decline. With society and government perhaps able to reduce child abuse, but unable to prevent it, it is important that the legal system at least enable adequate access to justice and redress for survivors of child abuse. The enactment of the special limitation period in New South Wales and Victoria is a commendable and long overdue recognition of the inadequacy of the previous limitation period applying to child abuse cases, which still operates elsewhere in Australia but will

[82] Australian Institute of Health and Welfare, *Child protection Australia 2002-03* (2004) Australian Institute of Health and Welfare, Canberra, 16 (Table 2.5).
[83] Ibid 16-17.

hopefully soon be amended.[84] The recognition of evidence from other disciplines made possible the Ipp Report's recommendation about the special limitation period, and that evidence underpins the provisions enacted. Now, that same evidence, including evidence about nondisclosure and delayed disclosure, should also be acknowledged to ensure that the substance of the second limb of the close associate provision is not neutralised.

[84] For reasons discussed in Mathews, 'Post-Ipp special limitation periods', above n 17, 256.